

Service Chapter: Medicaid 510-05

Effective Date: May 1, 2026

Overview

Updating 510-05-80-20 Hardship Provision to clarify when a Hardship exists and better describe the term “All lawful means”, asset recovery documents, and simplified language.

Description of Changes

1. 510-05-80-20 Hardship Provision - Change

Clarifying when a Hardship exists

Adding clarification of “All Lawful Means”

Adding types of documentation necessary when trying to recover assets

Updated the home equity value to 25% of the current home equity value

Simplified language

Policy Section Updates

1. 510-05-80-20 Hardship Provision

(N.D.A.C. 75-02-02.1-33.2)

- ~~1. A disqualifying transfer penalty period is not imposed on an individual to the extent the individual makes a satisfactory showing that an undue hardship exists for the individual.~~
A disqualifying transfer penalty is not applied if the individual can show that it would cause an undue hardship.
- ~~2. Upon imposition of a penalty period because of a transfer of assets or income, an individual must be provided notification of the right to request an undue hardship exception. An individual may apply for an exception to the transfer of asset penalty if the individual claims that the penalty period will cause an undue hardship to the individual and provides sufficient documentation to support that claim within 90 days of notification of the transfer penalty, or within 90 days after the circumstances upon which the claim of hardship is made known, or reasonably should have been known, to the affected individual or the person acting on behalf of the individual if incompetent. The facility in which the person resides may apply for an exception to the transfer penalty on behalf of the individual if they have the individual's, or the individual's personal representative's, consent.~~

Upon imposition of a penalty period because of a transfer of assets or income, an individual must be informed of the right to request a hardship exception. An individual can ask for an exception to the transfer of assets penalty if they think the penalty will cause undue hardship. They must give enough proof to support their claim within 90 days of being informed of the penalty. The facility where the individual lives can ask for an exception on the individual's behalf if the individual or their personal representative has given consent.

- ~~3. Requests for undue hardship exceptions must be submitted to the Medicaid Eligibility Unit. Upon receipt of a request for a hardship exception, the Medicaid Eligibility Unit will determine whether an undue hardship exists. The determination of the hardship made by the Medicaid Eligibility Unit will state the date upon which the hardship exception begins, and, if applicable, when it ends.~~

Send requests for a hardship exception to the Medicaid Policy Unit. Medicaid Policy will provide a decision stating when the exception starts and ends.

~~4. An undue hardship may exist if: exists only if the individual shows that all the following conditions are met:~~

4. An undue hardship may exist if:

~~a. Application of the penalty period would deprive the individual of food, clothing, shelter, or other necessities of life, or medical care such that the individual's health or life would be endangered;~~

a. There is proof that if the undue hardship waiver is not approved, the individual will

i. Be without food, clothing, shelter, other necessities of life, not get medical care such that the individual's health or life would be endangered; or

~~b. The individual, the individual's spouse, or anyone acting on behalf of either has not made the transfer after a previous request for a hardship exception;~~

ii. The transfer was a result of financial exploitation (e.g., fraud, misrepresentation, coercion) against the individual or their spouse.

Note: If the individual lives in a facility and will be involuntarily discharged, they must provide proof of:

- i. The date of discharge;
- ii. The reason for discharge; and
- iii. Where they will be discharged to.

b. All lawful means to get back the transferred assets or income, or the value of the transferred assets or income, from the transferee, a fiduciary, or any insurer have been tried;

All lawful means includes, but is not limited to:

- i. Contacting the individual who took or received the assets or income and asking that they be returned;
- ii. Filing criminal charges with law enforcement to pursue criminal investigation/prosecution if the transferred assets or income were stolen or improperly acquired in violation of the law; and

- iii. Filing a civil court action and diligently pursuing the civil action to its conclusion, including enforcement of any judgment

Note: Requesting the return of the assets/funds should be tried first, but that alone is not enough unless it is successful. Filing criminal charges is also unlikely to fully satisfy the requirement, because it may not result in prosecution and a restitution order. In most cases, filing a civil action will be necessary to pursue recovery even if law enforcement is investigating. Mediation may be a reasonable step in resolving a civil action.

Note: When requesting the return of transferred assets, the individual could suggest the possibility of getting a loan to repay the transferred amount. As an example, this could include getting a mortgage to repay the value of transferred real property if that is preferable to returning the real property. This is not a requirement, but a potential option for the individual requesting hardship exemption to pursue when requesting the return of the transferred assets/income.

Types of supporting documentation regarding attempts to recover assets include:

- i. Emails or letters to the individual who took or received the assets or funds;
 - ii. Copies of complaint or police report related to filing criminal charges, police documents regarding investigation, or criminal court documents;
 - iii. Copies of civil complaint, court orders, and other civil court documents; or
 - iv. Copies of court judgment and, if there is failure to comply with the judgment, documentation showing actions taken to enforce the judgment and collect the amount awarded.
- c. ~~The individual who transferred the assets or income, or on whose behalf the assets or income were transferred, has exhausted all lawful means to recover the transferred assets or income, or the value of the transferred assets or income, from the transferee, a fiduciary, or any insurer;~~ The individual, their spouse, or anyone acting on behalf of either, has not made the transfer after a previous request for a hardship exception;

- d. A person who would otherwise normally provide care would have no cause of action, or has ~~exhausted~~ tried all legal options ~~causes of action~~, against the transferee of person who got the assets or income of the individual or the their individual's spouse under North Dakota Century Code chapter 13-02.1, the Uniform Voidable Transactions Act (formerly Uniform Fraudulent Transfers Act), or any substantially similar law of another jurisdiction; ~~and~~
- e. The individual's remaining available assets, and the remaining assets of the individual's their spouse, if any, are less than the asset limit applicable to for an eligible Medicaid Unit. The Medicaid Unit That would include be the individual, the individual's their spouse, if any, and the individual's minor children. ~~if any, counting the value of all assets except~~

When adding up the value of the assets, do not include the following:

- i. ~~The home, but not if the individual, or the individual's spouse, if any, have equity in the home in excess of \$125,000;~~

i. The home the individual or their spouse is living in is an excluded asset unless the home has equity of more than 25% of the current Home Equity Limit.

The Home Equity Limit changes annually. Refer to 510-05-70-27 to calculate 25% of the current Home Equity Limit.

Example: The person's home is valued at \$200,000.00. They owe \$100,00.00, making their equity \$100,000.00. The 2026 home equity value is \$752,000.00 so 25% is \$188,000.00. The home's equity is less than \$188,000.00; therefore, the home can be excluded.

Example: The person's home is valued at \$200,000.00. The home is fully paid making the equity \$200,000.00. The 2026 equity value is \$752,000.00 so 25% is \$188,000.00. The home's equity is more than \$188,000.00; therefore, the home cannot be excluded.

- ii. Excluded personal effects, clothing ~~wearing apparel~~, household goods, and furniture;
- iii. One motor vehicle, if the primary main use of the vehicle is to ~~serve~~ meet the needs of members of the Medicaid unit; and

